U.S. Department of Justice

United States Attorney
District of New Jersey

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Newark, NJ 07102

973/645-2700

SBKOSTO/ELIEBERMANN/PL AGR
2007R001178

November 17, 2010

Mark A. Rush, Esq.
K&L Gates LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222

Re: Plea Agreement with Kenneth Lowson 10-114

Dear Mr. Rush:

This letter sets forth the plea agreement between your client, Kenneth Lowson, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Kenneth Lowson to Count 1 of the superceding indictment, Criminal No. 10-114 (KSH), which charges conspiracy to commit wire fraud and to obtain unauthorized access to computers, contrary to 18 U.S.C. §§ 1030 and 1343, in violation of 18 U.S.C. § 371. If Kenneth Lowson enters a guilty plea, is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Kenneth Lowson for his involvement with Wiseguy Tickets, Inc., Kristofer Kirsch, Joel Stevenson, Faisal Nahdi, and others, between in or about late 2002 and on or about January 30, 2009, in a fraudulent scheme to obtain performance and event tickets from Online Ticket Vendors ("OTVs") and to gain unauthorized access to the OTVs' computers in furtherance of that scheme. In addition, if Kenneth Lowson fully complies with all of the terms of this agreement, at the time of sentencing in this matter, this Office will move to dismiss counts 2 through 38 of the superceding indictment, Criminal No. 10-114, against Kenneth Lowson. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Kenneth Lowson may be commenced against him, notwithstanding the expiration of the limitations period after Kenneth Lowson signs the agreement.

Sentencing

The violation of 18 U.S.C. §371 to which Kenneth Lowson agrees to plead guilty carries a statutory maximum prison sentence of five (5) years and a statutory maximum fine equal to the greatest of: (1) $250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

Except in circumstances where the Court binds itself to sentence within the sentencing range described in paragraph 1 of Attachment A to this agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C), the sentence to be imposed upon Kenneth Lowson is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Kenneth Lowson ultimately will receive.

Further, in addition to imposing any other penalty on Kenneth Lowson, the sentencing judge: (1) will order Kenneth Lowson to pay an assessment of $100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Kenneth Lowson to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order Kenneth Lowson, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; and (4) pursuant to 18 U.S.C. § 3583, may require Kenneth Lowson to serve a term of supervised release of not more than three (3) years, which will begin at the expiration of any term of imprisonment imposed. Should Kenneth Lowson be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Kenneth Lowson may be sentenced to not more than two (2) years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Forfeiture

Kenneth Lowson agrees that as part of his acceptance of responsibility and pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(2)(B), and 1030(i) and Title 28, United States Code, Section 2461, he agrees to forfeit to the United States the property constituting or derived from proceeds obtained as a result of the conspiracy charged in Count 1 of the superceding indictment, said property to include not less than the $1,225,000 in United States currency currently deposited with the United States District Court for the District of New Jersey to secure Kenneth Lowson's conditions of release on bail and the computer equipment described in paragraphs b through ttt of the First Forfeiture Allegation in the Superceding Indictment. Prior to sentencing, Kenneth Lowson agrees to cooperate with this Office and the Federal Bureau of Investigation in identifying for potential forfeiture additional property constituting or derived from proceeds of the conspiracy charged in Count 1 of the superceding indictment. In addition, no later than 30 days prior to sentencing, Kenneth Lowson agrees to provide this Office with an accounting of the disposition of the post-tax proceeds from the operation of Wiseguy Tickets, Inc. for the years 2005 through 2008. Kenneth Lowson hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Kenneth Lowson by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Kenneth Lowson's activities and relevant conduct with respect to this case.

Stipulations

This Office and Kenneth Lowson agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Kenneth Lowson from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Kenneth Lowson waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense(s) may result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense(s) regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Kenneth Lowson. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against Kenneth Lowson.

No Other Promises

This agreement constitutes the plea agreement between Kenneth Lowson and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney

By: SETH B. KOSTO
EREZ LIBERMANN
Assistant U.S. Attorneys

APPROVED:

JUDITH GERMANO
Chief, Economic Crimes Unit
Criminal Division

I have received this letter from my attorney, Mark Rush, Esq. I have read this letter. My attorney and I have discussed the letter and all of its provisions, including the provisions addressing the charge(s), sentencing, the stipulations, waiver, forfeiture, and immigration consequences. I understand the letter fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:

Kenneth Lowson

Date: 11/18/10

I have discussed with my client this letter and all of its provisions, including the provisions addressing the charge(s), sentencing, the stipulations, waiver, forfeiture, and immigration consequences. My client understands the letter fully and wants to plead guilty pursuant to this plea agreement.

Mark A. Rush, Esq.
Counsel for Kenneth Lowson

Date: 11/18/10

Plea Agreement With Kenneth Lowson

Schedule A

1. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), this Office and Kenneth Lowson agreed that the Court should impose a sentence of between probation and two years' imprisonment.

2. If the Court accepts the parties' stipulation in paragraph 1 above at the time of Kenneth Lowson's plea, neither this Office nor Kenneth Lowson will seek a sentence outside the agreed-upon range of probation to two years' imprisonment.

3. Kenneth Lowson knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges his conviction on Count 1 of the Indictment. Kenneth Lowson reserves the right to appeal a sentence of imprisonment. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls between probation and two years' imprisonment. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

4. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.